

SDG 5: GENDER EQUALITY



A LEGAL GUIDE



This Legal Guide to the Sustainable Development Goals (SDGs) was first published by Advocates for International Development (A4ID).

Disclaimer

The information contained within this guide is correct at the date of publication.

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About A4ID

Advocates for International Development (A4ID) was founded in 2006 to see the law and lawyers play their full part in the global eradication of poverty. Today, A4ID is the leading international charity that channels legal expertise globally toward the achievement of the UN Sustainable Development Goals. Through A4ID, the world's top lawyers are able to offer high-quality, free legal support to NGOs, social enterprises, community-based organisations, and developing country governments that are working to advance human dignity, equality, and justice. A4ID also operates as a knowledge and resource hub, exploring how the law can be better used to help achieve the SDGs through a range of courses, publications, and events.



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Foreword



The SDG Legal Initiative

There are now less than ten years left to realise the achievement of the UN Sustainable Development Goals (SDGs). Aware of the challenge, Advocates for International Development (A4ID) has been continuing its innovative work towards meeting these targets by harnessing the power of the law and the work of lawyers. A4ID's SDG Legal Initiative has been developed because it is now more important than ever that the global legal community comes together to use their skills to advance positive global change.

The SDG Legal Initiative is a call to action to the global legal profession to work towards the achievement of the SDG Agenda and we have until 2030 to do so. By sharing knowledge and providing opportunities to take practical action to end poverty, protect the planet, and ensure that all people enjoy peace and prosperity, A4ID will continue its work with the legal sector to enhance this impact. The SDG Legal Initiative aims to create communities of practice, and to amplify the role of the legal sector in achieving the SDGs.

Legal Guide to the SDGs

As part of its SDG Legal Initiative, A4ID has developed the world's first Legal Guide to the SDGs. The Legal Guide has been developed as a unique resource, providing a foundational analysis of the role that law can and should play in the achievement of the SDGs. Developed in collaboration with lawyers, academics, and development practitioners, the Guide is made up of 17 distinct chapters, each focussed on one of the 17 goals. Each chapter provides an overview of the relevant regional, national, and international legal frameworks, highlighting how the law can be applied to promote the implementation of the SDGs. The Guide also offers key insights into the legal challenges and opportunities that lawyers may encounter, presenting clear examples of the actions that lawyers can take to help achieve each goal.

Role of Law in Achieving Gender Equality

Securing gender equality rights in every aspect of life is essential to achieve a just and sustainable world. The discrimination and the disparities in how people of different genders are treated, and the opportunities they are afforded, cut across all the Sustainable Development Goals (SDGs). It is essential and necessary that gender equality is mainstreamed within every sphere of development.

Throughout the world women and girls are disproportionately affected by discrimination in education and employment, they are at higher risk of domestic and exploitative situations of violence. They also have fewer rights to protect their access to health, food and to assert autonomy in their lives. The risk of harms and disparity in opportunity is heightened along other lines of inequality, such as ethnicity and poverty.

Many women across the world are systemically excluded from participation in decision making and from positions of leadership.

Gender discrimination continues to exist in all parts of the world, impacting every aspect of private and public life. This is increasingly apparent in crisis situations, such as the COVID-19 pandemic. Women and girls are disproportionately affected by the effects of the crisis and the measures put in place in response to it. There have been increased incidents of domestic abuse and the extent of women's burden of unpaid domestic and care-taking duties is widely known to have increased. Women have also been disproportionately exposed to the risk of the disease since they occupy a much

larger percentage of key worker roles in care and service positions. Additionally, many more women and girls are compelled out of economic necessity to continue working in high risk situations in the informal sector.

Gender inequality arises from established and often institutionalised cultural beliefs and behaviours that play out at personal, societal, institutional and political levels. Strong legal frameworks should establish the equality standards that institutions and society at large must uphold and provide a firm basis for policies aiming at improving the circumstances of women and girls. This in turn can support women and girls to achieve personal empowerment to claim their rights.

Yasmin Batliwala, MBE

Chief Executive



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The Sustainable Development Goals

The UN Sustainable Development Goals (SDGs) are a universal call to action to end poverty, protect the planet, and ensure that all people can enjoy peace and prosperity.

Also known as the Agenda 2030, the SDGs were agreed in 2015 by the UN General Assembly (Resolution 70/1). They were adopted by all UN Member States, and 2030 was set as the deadline for achieving them.

Compared to the Millennium Development Goals (MDGs),



which they succeed, the SDGs cover more ground, with wider ambitions to address inequalities, climate change, economic growth, decent jobs, cities, industrialization, oceans, ecosystems, energy, sustainable consumption and production, peace, and justice. The SDGs are also universal, applying to all countries, whereas the MDGs had only been intended for action in developing countries.

The 17 interdependent goals are broken down into 169 targets. At the global level, progress is monitored and reviewed using a set of 232 indicators. The Addis Ababa Action Agenda provides concrete policies and actions to further support the implementation of the 2030 Agenda. Each year, the UN Secretary General also publishes a report documenting progress towards the targets. In addition, the annual meetings of the High-level Political Forum on Sustainable Development (HLPF) continues to play a central role in reviewing global progress towards the SDGs.

At the national level, even though the SDGs are not legally binding, governments are expected to implement country-led sustainable development strategies, including resource mobilisation and financing strategies, and to develop their own national indicators to assist in monitoring progress made on the goals and targets.

SDG 17 stresses the importance of multi-stakeholder partnerships to achieve the goals. The mobilisation of governments, local authorities, civil society, and the private sector is needed to achieve this aim. Today, progress is being made in many places, but, overall, action to meet the SDGs is not yet advancing at the speed or scale required. This decade must therefore deliver rapid and ambitious action to meet the SDGs by 2030.

Key terms

SDG 5: Achieve gender equality and empower all women and girls

For the purposes of SDG 5, the following terms are defined:

'Gender': as defined by BRIDGE, is 'the array of socially constructed roles and relationships, personality traits, attitudes, behaviours, values, relative power and influence that society ascribes to the two sexes on a differential basis. Whereas biological sex is determined by genetic and anatomical characteristics, gender is an acquired identity that is learned, changes over time, and varies widely within and across cultures. Gender is relational and refers not simply to women or men but to the relationship between them.'¹

Gender equality is where society values the similarities, differences, and roles that men and women play equally.

'Gender equality': according to UNESCO, means that 'men and women should have equal conditions for realising their full human rights and for contributing to, and benefiting from, economic, social, cultural and political development. Gender equality is therefore the equal valuing by society of the similarities and the differences of men and women, and the roles they play. It is based on women and men being full partners in their home, their community and their society.'²

'Empowerment': as defined by UNESCO, is the process by which 'people - both women and men - take control over their lives: setting their own agendas, gaining skills, building self-confidence, solving problems and developing self-reliance. No one can empower another, only the individual can empower himself or herself to make choices or to speak out. However, institutions can support the processes that nurture self-empowerment of individuals or goals.'³



1 Esplen, E. and Jolly, S. (2006). *Gender and Sex: A Sample of Definitions*. Institute of Development Studies. University of Sussex, Bridge [online]. Available at: <https://www.eldis.org/document/A24760>

2 UNESCO (2003). *Gender Mainstreaming Implementation Framework: Baseline definitions of key concepts and terms*. [online]. Available at: <https://bit.ly/3kZRkrf>

3 Ibid

Overview of the targets



SDG 5 aims to build on the progress made under Goal 3 of the Millennium Development Goals (MDGs), which was promoting gender equality. According to the MDG Report 2015, progress has been made towards gender equality in education, employment and political representation but there is still significant disparity in some areas.⁴ SDG 5 addresses some of the concerns that Goal 3 of the MDGs failed to address, such as violence against women, inequalities in the division of unpaid care work, and unequal participation in decision-making beyond national parliaments.⁵ The United Nations Development Programme (UNDP) believes that the extended

aims of SDG 5 are crucial to sustainable development and capable of strengthening other development areas if successfully attained.⁶

Recognising that social, economic and environmental challenges are intertwined and require a systemic approach, the UN Agenda 2030 proclaims that the SDGs are 'integrated and indivisible'. The achievement of each SDG depends on progress in other areas and vice-versa. This is particularly true for gender equality since 'the achievement of full human potential and of sustainable development is not possible if half

4 United Nations (2015). *The Millennium Development Goals Report*. [online]. Available at: <https://bit.ly/3GNC2Sj>

5 UN Women (n.d.). *Progress towards meeting the MDGs for women and girls*. [online]. Available at: <https://bit.ly/2ZXXgwa>

6 United Nations Development Programme (n.d.). *Goal 5: Gender Equality*. [online]. Available at: <https://bit.ly/2ZTT6Fi>

of humanity continues to be denied its full human rights and opportunities.⁷ The mainstreaming of a gender perspective is reflected in the inclusion of 80 gender-relevant indicators across all the SDGs.⁸

Interaction between SDG 5 and other goals is very strong. Let's consider the example of health and well-being (SDG 3). As women's health issues are often not prioritised and underfunded, gender-sensitive budgeting and equality in decision-making in the health sector is crucial to improve public health. Moreover, in most contexts, mothers are responsible for children's health, so empowering them also leads to improved child health. Three of the SDG 5 targets are

TARGET 5-1 **End all forms of discrimination against all women and girls everywhere**



Target 5.1 has a wide scope and calls for the review, amendment and abolition of laws and policies that contribute to gender inequality. It also calls for the adoption and implementation of measures that challenge discriminatory social norms and practices. Removing discriminatory legal frameworks and adopting laws that advance gender equality are prerequisites to ending discrimination against women and girls.

Progress has been made in terms of education, especially in primary education, with two thirds of countries in developing regions having reached gender parity. In Africa for instance, the ratio of girls to boys in primary and secondary school

directly connected with health: eliminating violence against all women and girls (5.2), eliminating harmful practices such as female genital mutilation (5.3), and ensuring universal access to sexual and reproductive health and reproductive rights (5.6). Similarly, empowering women is crucial to ending hunger and ensuring food security (SDG 2) due to their key roles in agricultural production, food preparation and childcare.⁹

The following breakdown of each SDG 5 target provides an insight into the current global situation on gender equality and empowerment. It highlights the blockages and issues relevant to the achievement of each target.

increased from 87 to 91 between 2005 and 2012.¹⁰

Patriarchal traditions in some countries of Asia have led to sex-selective abortions; another form of sex discrimination that lacks reliable data, despite the prevalence of distorted sex ratios in these regions.¹¹ The Government of India in 1994 enacted legislation regulating prenatal testing, describing sex-selective abortion as 'discriminatory', and suggesting an important role for leadership and legislation in challenging discriminatory norms.

A single indicator has been agreed upon to measure progress on target 5.1, i.e. 'whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex'. Discriminatory legal frameworks are still in place in many countries, especially in

7 United Nations General Assembly (2015). *Resolution A/RES/70/1: Transforming our world: the 2030 Agenda for Sustainable Development*. [online]. Available at: <https://bit.ly/3kqgf9R>

8 UN Statistics Division (2018). *Gender-relevant SDG Indicators*. [online]. Available at: <https://bit.ly/3nUsPPr>

9 International Council for Science (2017). *A guide to SDG interactions: from science to implementation*. [online]. Available at: <http://pure.iiasa.ac.at/id/eprint/14591/>

10 African Development Bank Group (2015). *Empowering African Women: An agenda for action*. Africa Gender Equality Index. [online] Available at: <https://bit.ly/3bD0cRb>

11 Hesketh, T. et al (2011). *The consequences of son preference and sex-selective abortion in China and other Asian countries*. CMAJ, [online]. Available at: <https://bit.ly/3q7xX5C>

family laws, penal codes, nationality laws, and laws relating to inheritance and ownership over land and other economic resources. The Inter-Agency and Expert Group on SDG indicators has identified five key areas and questions to track progress on this target:

- i. Overarching legal frameworks
- ii. Political and public life and citizenship
- iii. Violence against women

- iv. Employment and economic benefits
- v. Marriage and family¹²

The indicator has an internationally established methodology, but data is not available for all countries.¹³ However, nearly two thirds of 53 countries studied in 2018 lacked laws that covered both direct and indirect discrimination against women. For example, 68% lacked rape laws based on the principle of consent.¹⁴



Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation

Target 5.2 addresses the prevalence of violence against women. An estimated 35% of women globally have been victims of physical or sexual violence in their lifetime.¹⁵ Eradicating the countless forms of violence against women should hold far-reaching implications for eradicating poverty, upholding human rights and ensuring peace and security.¹⁶

Violence against women and girls is a global phenomenon, from which no country is immune. In some areas, the proportion of women experiencing violence is sometimes a majority. For example, research in New Delhi showed that 92% of women had been victim of some form of sexual

violence in public areas during their lifetimes.¹⁷ To tackle abuse in private spheres, 119 countries have legislated on domestic violence, yet these laws do not necessarily comply with international standards.¹⁸

Violence against women and girls is a global phenomenon, from which no country is immune.

Research has estimated that globally in 2012 50% of women who were homicide victims were killed by partners or family members, compared to 6% of men. Moreover, 5,000 women per year are reported to have been victims of so-called

12 United Nations (n.d.). Sustainable Development Goal Indicator 5.1.1. UN Statistics Division.[online]. Available at: <https://bit.ly/2ZHHs01>

13 High Level Political Forum on Sustainable Development (2017). *HLPF Thematic review of SDG 5*. [online]. Available at: <https://bit.ly/3ELcbsh>

14 United Nations (2019). *The Sustainable Development Goals Report*. [online]. Available at: <https://bit.ly/3wdQIL7>

15 World Health Organisation (2013). *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*. [online]. Available at: https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf;jsessionid=71D69A108D911824FC7012A9A123640A?sequence=1

16 United Nations (2018). *Gender Equality: Why it matters*. UN Women [online]. Available at: <https://www.un.org/sustainabledevelopment/wp-content/uploads/2018/09/Goal-5.pdf>

17 UN Women (2013). *Safe cities global initiative*. UN Women [online]. Available at: <https://bit.ly/3wdQpdP>

18 United Nations (2015). *The World's Women 2015: Trends and Statistics*. New York: United Nations, Department of Economic and Social Affairs, Statistics Division [online]. Available at: https://unstats.un.org/unsd/gender/downloads/worldswomen2015_report.pdf

'honour' killings for perceived dishonour they had brought upon their families.¹⁹ Finally, women and girls comprise 72% of victims of human trafficking worldwide, predominantly for sexual exploitation or forced labour, while the vast majority of offenders continue to be male.²⁰

Two indicators have been agreed upon to track progress towards this target. Indicator 5.2.1 measures the share of women aged 15 years or older who experienced physical or sexual violence from an intimate partner in the last year. Indicator 5.2.2 is the proportion of women and girls subjected to sexual violence by persons other than an intimate partner



Eliminate all harmful practices such as child, early and forced marriage and female genital mutilation

Target 5.3 seeks to eliminate child, early and forced marriages, which are symptoms of sex inequality and discriminatory social norms. Today, over 700 million women are married before the age of 18, with a third of those before the age of 15. The prevalence is highest in South Asia and sub-Saharan Africa, with South Asia containing half of the world's child brides.²³

An exceptionally harmful form of sex discrimination is female genital mutilation (FGM), a practice which negatively impacts women's health, security and bodily integrity. It is estimated that, globally, at least 200 million women and girls

in the previous year. However, not all countries collect this data or do so on a regular basis.²¹

The COVID-19 pandemic has had a profound negative impact on progress towards this target. Lockdown measures imposed to combat the spread of the virus are correlated with a dramatic increase in domestic violence, with early data indicating spikes of 25-50% in countries with reporting mechanisms in place.²² Due to the ongoing sanitary crisis and corresponding restrictions on civil liberties, we can expect to see a sustained backslide in progress towards ending violence against women, in the coming months and years.

have undergone some form of FGM. While FGM is declining in many countries, the practice persists as a social norm in countries such as Somalia, Guinea, Djibouti and Egypt.²⁴

Due to the COVID-19 pandemic, increased rates of child marriage are expected due to a higher number of families thrust into poverty. The ongoing pandemic may result in an increase of as many as 10 million girls being subjected to child marriage.²⁵

Again, measurement of progress is impeded by a lack of sufficient data coverage both for the proportion of women married before the age of 15 and 18 (Indicator 5.3.1) and the proportion of girls and women who have undergone FGM (Indicator 5.3.2).

19 United Nations (2010). *Impunity for domestic violence, 'honour killings', cannot continue*. UN News [online]. Available at: <https://bit.ly/3CCJME6>

20 UNODC (2018). *Global Report on Trafficking in Persons*. United Nations [online]. Available at: <https://bit.ly/3nSRoMB>

21 UN Statistics Division (n.d.). *SDG Indicators: Metadata repository*. [online]. Available at: <https://unstats.un.org/sdgs/metadata/>

22 United Nations, (2020). *Policy Brief: The Impact of COVID-19 on Women*. Available at: <https://bit.ly/3EJwKFI>

23 UNICEF (2014). *Ending child marriage: progress and prospects*. New York: UNICEF [online], p.1. Available at: <https://bit.ly/31rnCHI>

24 United Nations (2020). *International Day of Zero Tolerance for Female Genital Mutilation*. United Nations [online]. Available at: <https://bit.ly/3bEjUf7>

25 UNICEF (2021). *COVID-19: A threat to progress against child marriage*. Available at: <https://data.unicef.org/resources/covid-19-a-threat-to-progress-against-child-marriage/>

TARGET 5-4



Recognise and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate

When unpaid work (e.g. household chores) is taken into account, women work longer days than men. However, a survey of data from around 90 countries is revealing: women still spend triple the amount of time on unpaid work at home compared to men.²⁶ Women are also overrepresented as domestic workers and in part-time jobs, often lacking social protection and fair pay. Indicator 5.4.1 measures the average time men and women spend on unpaid domestic and care work per day in each country. However, specific target figures are not defined.

TARGET 5-5



Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life

As of January 2019, women's representation in national parliaments averaged 24%. This is just 5% higher than in 2010.²⁹ As of February 2019, Rwanda had the highest number of women in parliament at 61%. There are only

The burden of unpaid care work has also significantly increased during the pandemic, disproportionately affecting women and reducing women's participation in the paid workforce.²⁷

Progress has been made in the last two decades with countries legislating on maternity and paternity benefits. In over half of the world's countries, legislation provides for a maternity leave of at least 14 weeks. Also, 48 countries have provisions for paternity leave.²⁸ However, these measures are not inclusive. They often exclude those who are self-employed, domestic labourers or agricultural workers. Moreover, imbalances between maternity and paternity leave perpetuate the stereotype of women as caregivers and men as breadwinners. This is detrimental to both genders.

two other countries where women hold more than half of the seats in parliament, Cuba (53%) and Bolivia (51%).³⁰ Australia and New Zealand, and Latin America and the Caribbean are the most advanced regions for this indicator. However, even in these regions, less than a third of seats are occupied by women.

Women are also underrepresented in managerial positions at senior and middle levels. In 2018, women comprised 39% of the workforce, but held only 27% of managerial positions.³¹

26 United Nations Department of Economic and Social Affairs (2019). *The Sustainable Developments Goals Report 2019*. [online]. Available at: <https://bit.ly/2ZYBmsu>

27 United Nations, (2020). *Policy Brief: The Impact of COVID-19 on Women*. Available at: <https://bit.ly/3BDxqKB>

28 UN Statistics Division (2015). *The World's Women 2015*. Chapter 4. United Nations [online]. Available at: <http://unstats.un.org/unsd/gender/chapter4/chapter4.html>

29 United Nations Department of Economic and Social Affairs (2019). *The Sustainable Developments Goals Report 2019*. [online]. Available at: <https://bit.ly/2ZYBmsu>

30 UN Women (n.d.). *Women's leadership and political participation*. UN Women [online]. Available at: <https://www.unwomen.org/en/what-we-do/leadership-and-political-participation>

31 United Nations Department of Economic and Social Affairs (2019). *The Sustainable Developments Goals Report 2019*. [online]. Available at: <https://bit.ly/2ZYBmsu>

TARGET 5-6



Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences

Women's and girls' autonomy in decision-making over their sexual life is crucial to their empowerment and to the fulfilment of their reproductive rights. Based on surveys in 51 (mostly low- and middle-income) countries, among women aged between 15 to 49 who are married or in a union, only 57% make their own informed decisions about sexual relations and the use of contraceptives.³²

Progress under this target is measured against the number of countries with laws and regulations that guarantee women and men full and equal access to sexual and reproductive health care, information, and education.

The Mexico City policy, also known as the 'global gag rule', is a US governmental policy that requires foreign NGOs to agree that they would not 'perform or actively promote abortion as a method of family planning' as a condition of receiving assistance from the US Agency for International Development (USAID).³³ First issued in 1984 by President Reagan, the policy has been revoked and reinstated multiple times following political changes in the US Administration. Most recently, the Biden Administration rescinded the policy

that had been reinstated and extended by President Trump.³⁴ Research shows that the policy does not reduce the number of abortions, but instead increases unsafe abortions and has negative effects on maternal and child health.³⁵ The political fight around this policy is paralleled with the pushback on reproductive rights witnessed domestically across the United States of America.



³² Ibid

³³ USAID. (2019). *Protecting life in global health assistance*, FAQs US Aid [online]. Available at: <https://bit.ly/3CHQ19M>

³⁴ The White House (2021). *Fact sheet: President Biden to Sign Executive Orders Strengthening Americans' Access to Quality, Affordable Health Care*. [online]. Available at: <https://bit.ly/3H9QN1T>

³⁵ Bendavid, E., Avila, P., Miler, G. (2011). *United States aid policy and induced abortion in sub-Saharan Africa*. Bull World Health Organ, [online] pp. 873-880. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3260902/>

Key actions lawyers can take

The final section of this chapter provides more details on how the international legal community can engage in efforts to achieve SDG 5. However, the following short summary

describes some of the key actions that lawyers can take to contribute to the sustainable development agenda on gender equality.

Learn and educate

Substantial research and analysis on the role of law and justice in achieving gender equality is widely available. Armed with this information, lawyers in all sectors of the legal profession – corporate counsel, private practice,

government advisors, parliamentarians, international agencies, civil society, academia – are well-positioned to contribute to SDG 5.

Integrate

Gender inequality is a well-documented issue across all industries, and the legal sector is no exception. However, as the profession responsible for holding governments and organisations to account for gender discrimination and exclusion, it is essential that the legal community looks inwards to address persistent gender inequalities and provide a more inclusive working environment,

which supports as many women as men into positions of leadership. Practical steps include, investigating payment practices across all departments to ensure equal pay for equal work and introducing ‘family friendly’ policies to meet the needs of employees with children, without compromising their career progression.

Act

Discriminatory laws continue to act as a major barrier to the realisation of women’s rights around the world. Lawyers working on the drafting or reform of any legislation should ensure gender impact assessments are always undertaken to identify any potentially adverse impacts on gender equality.

All legal professionals can partner with A4ID to provide pro bono legal services to all organisations working to promote gender equality worldwide. This could include providing pro bono assistance to reinforce national legal reform aimed at eliminating sex-based inequalities.

Elements of the international legal framework

Charter of the United Nations

Adopted: 26 June 1945

Entered into force: 24 October 1945

Status of ratification (as of September 2021): 193 Parties

The Preamble to the Charter of the United Nations sets equal rights of men and women as one of its central goals. One of the purposes set out in Article 1 of the Charter is 'to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to [...] sex'. The Charter states that

The goal of equality between men and women is an obligation for all UN Member States.

all members of the United Nations are legally bound to strive towards the full realisation of human rights and fundamental freedoms for all. The goal of equality between women and men is an obligation of all State members of the United Nations.

Universal Declaration of Human Rights

Adopted by the UN General Assembly: 10 December 1948

The Universal Declaration on Human Rights (UDHR) is a landmark in the articulation and advancement of fundamental human rights and freedoms. In 30 articles, the UDHR sets forth a series of civil, political, economic, social and cultural rights. Although it was not intended to create legally binding obligations, the UDHR presents a common standard of achievement that is widely regarded as customary international law. Moreover, many of its provisions have been adopted in binding international human rights instruments.

Article 1 and Article 2 proclaim the inherent dignity of all human beings and the principle of non-discrimination based on sex, respectively. Article 1 asserts the right of all individuals to dignity and inalienable rights, including women and children. It states that 'all human beings are born free and

equal in dignity and rights'. The non-discrimination principle in Article 2 states that 'everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind', including those made on the basis of sex.

Although the notion of gender equality is not embodied in the text, the UDHR remains a highly influential international document that has inspired other international documents for women's rights through the application of the principle of non-discrimination.

International Covenant on Civil and Political Rights

Adopted by the UN General Assembly: 16 December 1966

Entered into force: 23 March 1976

Status of ratification (as of September 2021): 173 Parties

The International Covenant on Civil and Political Rights (ICCPR) commits all Parties to respect the civil and political rights of individuals, including:

- The right to life
- Freedom from arbitrary arrest and detention
- The right to due process
- Freedom of thought, religion, speech and association
- The right to vote

With the UDHR and the International Covenant on Economic, Social and Cultural Rights, the ICCPR forms the International Bill of Human Rights.

An Optional Protocol, ratified by 116 States, recognises the competence of the UN Human Rights Committee to consider complaints from individuals who claim their rights under the Covenant have been violated.

Under Article 3, the Covenant obligates all parties to ensure that the rights enshrined are enjoyed equally by men and women. Article 23 also states that ‘no marriage shall be entered into without the free and full consent of the intending spouses’. Additionally, State parties commit to ‘take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution’ (Article 23.4).

International Covenant on Economic, Social and Cultural Rights

Adopted by the UN General Assembly: 16 December 1966

Entered into force: 3 January 1976

Status of ratification (as of September 2021): 171 Parties

The International Covenant on Economic, Social and Cultural Rights (ICESCR), drawing on the UDHR, affirms a series of human rights and encourages social progress. Legally binding on those States that have ratified the treaty, it indicates a wide consensus on economic, social and cultural human rights. However, several States have signed but not ratified the ICESCR, notably Cuba, Malaysia, Saudi Arabia, and the United States.

Article 3 of the ICESCR is identical to Article 3 of the ICCPR in that it reiterates that human rights must be equally enjoyed by men and women. Under Article 7, there is also a specific reference to equality for women with respect to just conditions of work and to equal remuneration for work of equal value.

In 2009, an Optional Protocol to the Covenant was adopted giving the Committee on Economic, Social and Cultural Rights the ability to receive and consider individual communications from persons claiming to have had their rights violated. Yet, to this date, only 24 States have ratified it.

Convention on the Elimination of all Forms of Discrimination against Women

Adopted by the UN General Assembly: 18 December 1979

Entered into force: 3 September 1981

Status of ratification (as of September 2021): 189 Parties

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) defines discrimination against women and sets forth an agenda to eliminate it.

The Convention has achieved a high number of ratifications, with the notable exceptions of Iran, Somalia, Sudan and the United States. However, many States have entered reservations against certain articles of the Convention on the grounds that they contradict national law, tradition, religion or culture. These States therefore do not consider themselves as bound by these articles. However, in line with the Vienna Convention on the Law of Treaties, the CEDAW states that a reservation incompatible with the object and purpose of the Convention shall not be permitted (Article 28, para. 2). The CEDAW Committee considers that Article 2 (general principle of non-discrimination) and Article 16 (non-discrimination in matters of marriage and family relations) are core provisions. Reservations to these articles should therefore be impermissible. Although some State Parties have since withdrawn their reservations to those articles, the number and extent of reservations remain concerning.

States must guarantee human rights and fundamental freedoms to women 'on a basis of equality with men'. This non-discrimination principle applies in the public sphere (Articles 7 to 9 on political life, representation and nationality), in the social and economic sphere (Articles 10 to 14 on education, employment and health), and in the private sphere (Articles 15 and 16 on equality in marriage and family life).

The CEDAW Committee, since the adoption of the Optional Protocol to the Convention in 1999, can hear complaints from individuals alleging a violation of their rights. Complainants must have exhausted all available domestic remedies prior to submission. If the CEDAW Committee finds that the State has violated the Convention, it will issue recommendations. The State has 6 months to provide a response outlining the actions taken to remedy the violation. The CEDAW Committee may also, on its own initiative, initiate inquiries if it has received reliable information indicating grave or systematic violations of the rights set forth in the Convention by a State Party. Finally, the Committee produces observations on the reports submitted by States and general recommendations supporting the fulfilment of equality of men and women.



Convention on the Rights of the Child

Adopted by the UN General Assembly: 20 November 1989

Entered into force: 2 September 1990

Status of ratification (as of September 2021): 196 Parties

The United Nations Convention on the Rights of the Child (CRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. It defines a child as 'any human being under the age of 18, unless

the age of majority is attained earlier under national legislation'. Compliance is monitored by the UN Committee on the Rights of the Child. The CRC is the most widely ratified international human rights treaty. Notably, the United States is the only country that has signed, but not ratified, this Convention.

Article 2 of the CRC states that the rights enshrined must be applied equally to all children, irrespective of sex or any other status.

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

Adopted by the UN General Assembly: 15 November 2000

Entered into force: 25 December 2003

Status of ratification (as of September 2021): 178 Parties

Known as the Palermo protocol and adopted to supplement the UN Convention against Transnational Organised Crime, this is the first universal instrument to address all aspects of trafficking in persons. The Protocol pays particular attention to women and children who are the first victims of human trafficking.

The Protocol recognises multiple facets of trafficking in persons, defined as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'. The term

'exploitation' encompasses prostitution, forced labour, slavery, servitude, and the removal of organs.

State Parties commit to adopt measures to prevent such trafficking (Art. 9 to 13), to punish the traffickers (Art. 5) and to protect the victims of such trafficking (Art. 6 to 8).



Soft law and declarations

Declaration on the Elimination of Violence Against Women (DEVAW)

The DEVAW was adopted by the United Nations General Assembly in its resolution 48/104 of 20 December 1993. The resolution is often seen as complementary to the CEDAW. It provides the most widely used definition of violence against women, as 'any act of gender-based violence that results

in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life' (Article 1).



UN Women Executive Director, Phumzile Mlambo-Ngcuka

Beijing Declaration and Platform for Action

The Beijing Declaration, adopted by the UN General Assembly at the end of the Fourth World Conference on Women on 15 September 1995, solemnly affirms that ‘women’s rights are human rights’ and that women’s empowerment is ‘fundamental for the achievement of equality, development and peace’.

The Platform for Action, which accompanies the Declaration, highlights ‘critical areas of concern’: poverty, unequal access to education and healthcare, violence against women, etc. In each of these areas, the problem is diagnosed and strategic objectives are proposed with concrete actions to be taken, many of them similar to the SDG 5 targets.

Commission on the Status of Women – Agreed conclusions

The Commission on the Status of Women (CSW) is a commission of the UN Economic and Social Council established in 1946. It is an intergovernmental body dedicated to the promotion of gender equality and women empowerment.

The main output of the CSW is the agreed conclusions adopted each year with a priority theme. They contain a set of concrete recommendations for governments, international institutions, civil society actors and other relevant stakeholders to be implemented at the international, national, regional and local level. The agreed conclusions are instrumental in shaping the global standards on gender equality and women empowerment. Past priority themes include social protection systems (2019), rural women and girls (2018), women’s economic empowerment in the changing world of work (2017), and the link between sustainable development and women’s empowerment (2016).³⁶



³⁶ UN Women (n.d.). *Outcomes: Agreed Conclusions for the Commission on the Status of Women*. UN Women [online]. Available at: <http://www.unwomen.org/en/csw/outcomes>

Regional legal and policy frameworks

African Union

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

Adopted in 2003 and known as the Maputo Protocol, this treaty is the main legal instrument for the protection of the rights of women and girls in Africa. The Protocol provides various rights for women, including:

- The right to integrity and security of the person
- The right not to be subjected to harmful practices
- Rights relating to marriage, separation, divorce, access to justice

- The right to education health and reproductive health
- Economic and social welfare rights³⁷

The Protocol has been ratified by 42 African States. Since the establishment of The Protocol, the African Commission on Human and Peoples' Rights has issued General Comments on The Protocol and, in 2004, adopted a declaration on Gender Equality in Africa, reaffirming the African Union Member States' commitment to the principles of gender equality in the continent.

Americas

Inter-American Convention on the prevention, punishment and eradication of violence against women (1994)

Known as the Convention of Belém do Pará, the Inter-American Convention on the prevention, punishment, and eradication of violence against women defines what violence against women is (Articles 1 and 2), establishes that women have the right to live a life free of violence and that violence against women constitutes a violation of human rights and

fundamental freedoms (Articles 3 to 6).

State Parties commit to adopt policies to prevent, punish and eradicate violence against women, whether in the public or the private sphere (Article 7). They undertake to assert women's rights within society (Article 8), taking into

³⁷ African Union (2003). *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*. African Union [online]. Available at: <https://bit.ly/2ZNu6Qs>

consideration the special vulnerability of certain groups of women such as migrants, racial or ethnic minorities, pregnant, disabled, or poor women (Article 9). The Convention requests States to report on measures adopted to combat violence against women to the Inter-American Commission of Women. It also creates a right for individuals to petition the Inter-American Commission on Human Rights

for violation of Article 7 by a State Party.

Entered into force in 1995, the Convention has been ratified by all Member States of the Organisation of American States, except for Canada, Cuba and the United States of America.

Asia

The Declaration on the Elimination of Violence against Women in ASEAN (2004)

This Declaration reflects the incorporation by the Association of South East Asian Nations (ASEAN) of CEDAW into a regional instrument. It recognises violence against women as a violation of human rights. According to the National

Commission on the Role of Filipino Women, the Declaration 'strengthens regional cooperation, collaboration and coordination for the purpose of eliminating violence against women in the region, either individually or collectively.'³⁸

Europe

European Union treaties

The Treaty on European Union includes equality between men and women among the values of the EU (Article 2 and Article 3.3). Gender equality is also enshrined in Article 21 of the Charter of Fundamental Rights. Additionally, Article 8 of the Treaty on the Functioning of the European Union grants the Union the mission of eliminating inequalities and promoting equality between men and women through all its activities. Consequently, the EU has adopted several legal

instruments in this area. For instance, the Directive 79/7/EEC of 19 December 1978 seeks the progressive implementation of the principle of equal treatment for men and women in matters of social security. Another important instrument is the Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

³⁸ ASEAN (2004). *The Declaration on the Elimination of Violence against Women in ASEAN*. ASEAN [online]. Available at: <https://bit.ly/3CKSss5>

Anti-trafficking Directive 2011/36/EU

Adopted in April 2011, the Anti-trafficking Directive establishes minimum standards concerning the definition of criminal offences and sanctions in the area of human trafficking. It also introduces common provisions to strengthen the prevention of this crime and the protection of

the victims.³⁹ The Directive takes a victim-centred approach and recognises that women are the main victims of trafficking and therefore provides for gender-specific assistance and support measures.

European Convention on Human Rights (1950)

The ECHR obliges all ratifying Parties to guarantee the civil and political rights of those within their jurisdiction. All 47 Council of Europe Member States have signed and ratified the Convention.

Article 14 of the ECHR provides that the fulfilment of rights and freedoms set forth in the Convention shall be secured without discrimination based, inter alia, on sex.

In 2000, the ECHR has been complemented by the Optional Protocol No.12, which provides a general prohibition of discrimination. Article 14 of the ECHR was limited in the sense that it only prohibited discrimination in the enjoyment of one or the other rights guaranteed by the Convention. This limitation was removed by the Protocol which guarantees that no person shall be discriminated against on any basis, including sex or gender, by any public authority. Entered into force in 2005, Protocol No.12 has been ratified by 20 States.

The European Court of Human Rights (ECtHR) rules on individual and State applications alleging violations of the rights set forth in the Convention and its Protocols. Over the

years, the ECtHR has developed an impressive body of case law in the field of gender equality.⁴⁰



39 EUR-Lex (2011). *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*. EUR-Lex [online]. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>

40 European Court of Human Rights Press Council (2020). *Factsheet: Gender Equality*. ECHR [online]. Available at: https://www.echr.coe.int/Documents/FS_Gender_Equality_ENG.pdf

Convention on Preventing and Combating Violence against Women and Domestic Violence (2014)

Commonly known as the Istanbul Convention, this Convention came into force in 2014 as a legally binding international instrument on the prevention and prohibition of violence against women and girls. It establishes a comprehensive framework to prevent this kind of violence, support the victims, and punish persecutors. It is based around the understanding that gender-based violence is violence that is 'directed against a woman because she is a woman or that affects women disproportionately'. It obliges the State to take preventive actions to stop violence against women and to protect victims. The Convention makes it explicitly clear that there can be no equality between men

There can be no equality between men and women if women experience violence on a large scale, and particularly, a larger scale than men.

and women if women experience violence on a large scale, which is ignored by the State. The Convention also urges State parties to apply the framework to men who are victims of domestic violence.

Recommendation on preventing and combatting sexism (2019)

Adopted by the Council of Europe's Committee of Ministers in March 2019, this recommendation includes the first ever internationally agreed definition of sexism. It stresses that sexism is a manifestation of 'historically unequal power relations between women and men, which leads to discrimination and prevents the full advancement of women in society'. It also notes that sexism is 'widespread and prevalent in all sectors and all societies'. This instrument recommends governments to take measures to prevent and combat sexism and its manifestations in the public and private spheres. States are invited to inform the Council of Europe's Gender Equality Commission of measures taken and progress achieved.⁴¹

The annexed guidelines contain a comprehensive list of recommended measures to tackle sexism in employment, the justice sector, education, sport, advertising, internet, social media, etc.

It stresses that sexism is a manifestation of 'historically unequal power relations between women and men, which leads to discrimination and prevents full advancement of women in society.'

⁴¹ Council of Europe (2019). Preventing and Combating Sexism: Recommendation CM/Rec.. Council of Europe [online]. Available at: <https://bit.ly/3k3NXBx>

Examples of relevant national legislation

Germany

General Equal Treatment Act (2006)

This Act is the first comprehensive anti-discrimination law in Germany and implements four European Union directives:

- 2000/43: Equal treatment between persons irrespective of racial or ethnic origin.
- 2000/78: Equal treatment in employment and occupation.
- 2002/73: Equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.
- 2004/113: Equal treatment between men and women in the access to and supply of goods and services.

The aim of the law is to prevent and ultimately eliminate discrimination on the grounds of sex, religion, race, handicap or sexual identity in employment and social legislation,

private law and public service law. However, de facto equality between women and men in the job market has not yet been achieved in Germany. In recent years, there has been a noticeable increase in women's employment, but mainly in jobs with shorter working hours and lower wages.⁴²

However, de facto equality between women and men in the job market has not yet been achieved in Germany.



Germany's Chancellor, Angela Merkel, receives the 2017 International Gender Equality Prize from the Government of Finland

⁴² Botsch, E. (2015). The Policy on Gender Equality in Germany. Brussels: European Union [online]. Available at: <https://bit.ly/3w9A1eg>

South Africa

Section 187 of the South African Constitution (1996)

The Constitution prohibits discrimination against anyone on the grounds of their gender, and further prescribes for the

legislature to enact national legislation to prevent or prohibit unfair discrimination.

The Commission on Gender Equality (1996)

The legislature established a Commission on Gender Equality with the objective of promoting gender equality and to advise the Parliament or any other legislature on proposed

legislation which affects gender equality and the status of women.⁴³

The Employment Act (1998)

This Act was passed to promote equal opportunity and fair treatment through the elimination of unfair discrimination in the workplace. This legislation is also used to implement affirmative action measures.

The South African Constitution prohibits discrimination against anyone on the grounds of their gender.



⁴³ The Republic of South Africa (1996). *Commission of Gender Equality Act*.39, 373 (17341) [online]. Available at: <https://bit.ly/3k2TCry>

Thailand

Gender Equality Act (2015)

This Act, adopted on 9 September 2015, aims to protect individuals from gender-based discrimination. The Act goes further in protecting those in the lesbian, gay, bisexual and

transgender community (LGBT), from discrimination and stigmatisation.

United Kingdom

Equality Act (2010)

The Equality Act came into force in 2010, merging 116 pieces of legislation into one act. This Act provides a legal framework which aims to protect the rights of individuals and advance the equality of opportunity for everyone. The nine main pieces of legislation incorporated into this Act are:

- The Equal Pay Act (1970)
- The Sex Discrimination Act (1975)
- The Race Relations Act (1976)
- The Disability Discrimination Act (1995)
- The Employment (Religion or Belief) Regulations (2003)
- The Employment Equality (Sexual Orientation) Regulations (2003)
- The Employment Equality (Age) Regulations (2006)
- The Equality Act (2006) Part 2

- The Equality Act (Sexual Orientation) Regulations (2007)

The Act simplified and strengthened the legislation to provide the United Kingdom with a comprehensive discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.

However, issues such as dual discrimination, socio-economic inequalities and the gender pay gap are not covered in the Act, indicating there is still room for inequalities to be addressed.

This Act provides a legal framework which aims to protect the rights of individuals and advance the equality of opportunity for everyone.

Constitution (2014)

Within the Arab World, Tunisia has a long history of progressive legal reform towards gender equality. In 1956, reform of the Personal Status Code abolished many discriminatory practices, including polygamy and repudiation. Tunisian women were granted the right to vote in 1957 and to stand for elections in 1959. In 1962, they were authorised to access birth control. Abortion was legalised in 1965. However, political authoritarianism and the persistence of cultural attitudes prejudicial to women prevented the attainment of substantive equality.⁴⁴

After the Jasmine Revolution in 2010-2011, the drafting of a new constitution sparked a vivid public debate. Women's movements successfully advocated against Article 2.28 of the draft constitution which established the 'complementarity of men and women' rather than the right to equality.⁴⁵

The constitution adopted in 2014 is a compromise between different political sensitivities. While it recognises Islam as the official state religion (Art. 1), the text also provides that Tunisia is a civil state based on the supremacy of the law (Art. 2). The constitution enshrines equality of all citizens, men and women, before the law without discrimination (Art. 21). It also obliges the State 'to protect women's accrued rights and work to strengthen and develop those rights' and to eradicate violence against women (Art. 46). In terms of participation to political life, the constitution establishes the principle of

parity in elected assemblies (Art. 46), includes a commitment to guarantee women's representation in elected bodies (Art. 34), and reaffirms that women and men alike can run for president (Art. 74).⁴⁶

Having a constitutional framework that is progressive, both from a regional and global perspective, is instrumental for women's rights but translating these rights into reality will require additional efforts from public authorities and civil society.



44 HRC (2013). *Report of the Working Group on the issue of discrimination against women in law and in practice – Addendum – Mission to Tunisia*. UN Human Rights [online]. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/50/Add.2

45 HRC (2017). *Compendium of good practices in the elimination of discrimination against women*. UN Human Rights [online]. Available at: <https://bit.ly/3nXAMmK>

46 Tunisia's Constitution (2014). *Constitute Project*. [online]. Available at: https://www.constituteproject.org/constitution/Tunisia_2014.pdf

Insights for the legal profession

a) Examples of relevant cases and legal proceedings

South Africa

Bhe and Others v. Magistrate, Khayelitsha and Others (2005) (Constitutional Court)

This case involved a constitutional challenge to the rule of male primogeniture (the right of succession belonging to the first-born son) as it applied in South African customary laws of succession.⁴⁷

The case revolved around the two minor daughters of Ms Nontupheko Bhe and her deceased partner. The argument was that the customary rule of male primogeniture

discriminated against the two daughters because they were prevented from inheriting the estate of their late father.

The Court applied Section 9 of the Constitution and held that the rule of male primogeniture be declared unconstitutional and invalid to the extent that it excludes women from inheriting property.

Committee on the Elimination of Discrimination Against Women

Kell v. Canada (2012)

In 2012, the UN Committee on the Elimination of Discrimination against Women ruled in favour of Cecilia Kell in her complaint against Canada.

Cecilia Kell, an aboriginal woman from the Northwest Territories, lived with her partner in housing available to indigenous people under a special scheme, where Kell experienced domestic abuse. In 1993, the Northwest Territories Housing Corporation removed Kell's name from

the Assignment Lease at the request of her partner, without her knowledge or consent. Two years later, Kell was evicted from her home by her partner.

Over a period of ten years, Kell unsuccessfully fought to regain her property rights through the Canadian legal system. In 2008, she filed a complaint against Canada claiming to be the victim of violations of a number of articles of CEDAW. In particular, Kell alleged that Canada had (1) failed to ensure

⁴⁷ South Africa: Constitutional Court (2004). *Bhe and Others v Khayelitsha Magistrate and Others*. Saflii Southern African Legal Information Institute [online]. Available at: <http://www.saflii.org/za/cases/ZACC/2004/17.html>

that its agents refrain from engaging in any act or practice of discrimination against women, when they removed her name from the lease without her consent and (2) failed to ensure that its agents afford the same rights to her in comparison to her partner's rights in respect of ownership, acquisition, management, administration and enjoyment of the property.

The Committee concluded that Kell's property rights had been prejudiced and that she had been discriminated against as an aboriginal woman. The Committee also found that Canada had failed to provide Kell with effective legal

protection when she sought to regain her property rights.

The Committee established that Canada had violated articles 1, 2 and 16 of the CEDAW and that it should provide monetary compensation and housing equal to the value of the property that had been taken from Kell. The Committee also advised on employing and training more aboriginal women to give legal assistance, and to review Canada's legal system in order to make sure that aboriginal women victims of domestic violence have effective access to justice.

European Court of Justice

Case 43/75 Defrenne v. Sabena (No.2) (1976)

Female flight attendants from the Belgian national airline Sabena were obliged to retire at the age of 40, unlike their male counterparts. Gabrielle Defrenne complained that this entailed lower pension rights and therefore violated her right to equal treatment under Article 119 EEC (now Article 157

TFEU). The Court recognised the direct effect of the principle of equal pay for women and men and ruled that the principle not only applied to the action of public authorities but also extended to all agreements between private parties.

European Court of Human Rights

Opuz v. Turkey (2009)

Turkish national, Mrs. Nahide Opuz's husband, H.O., had repeatedly threatened and assaulted her and her mother since 1995. They filed multiple complaints, but the Turkish authorities failed to take any significant action to investigate the matter and to protect the two women. In 2002, H.O. shot and killed his mother-in-law. Initially sentenced to life

imprisonment, he saw his sentence reduced to 15 years and 10 months' imprisonment and was released from custody pending an appeal.

The European Court of Human Rights ruled that there had been a violation of Article 2 ECHR (right to life) concerning

the murder of the applicant's mother and a violation of Article 3 ECHR (prohibition of inhuman or degrading treatment) concerning the repeated violence, death threats and injury the applicant suffered. The Court considered that the response of the authorities was manifestly inadequate to the gravity of the offences and that the judicial decisions revealed a lack of efficacy and a certain degree of tolerance.

This judgment is a landmark decision as, for the first time in a domestic violence case, the Court also held that there had been a violation of Article 14 ECHR (prohibition of discrimination) in conjunction with Articles 2 and 3. The Court observed that domestic violence mainly affects women and therefore a State's failure to address domestic violence constitutes a form of gender-based discrimination.⁴⁸

M.C. v. Bulgaria (2003)

The applicant, M.C., is a Bulgarian national who alleged that she was raped by two men, A and P, when she was 14 years old. A and P denied the rape and maintained that they had consensual sex with the applicant. An investigation was conducted by the police, but the district attorney decided to close the case as he believed that there was a lack of evidence of resistance from the victim, and the use of force or threats could not be established beyond a reasonable doubt. Bulgarian law recognizes rape only in situations of helplessness or when the victim was coerced through the use or threat of force.

The European Court of Human Rights affirmed that States have a positive obligation to enact criminal-law provisions effectively punishing rape and to apply them through effective investigation and prosecution. Taking into account comparative and international law as well as the 'evolution of societies towards effective equality and respect for each individual's sexual autonomy', the Court was persuaded that any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risked leaving certain types of rape unpunished. According

to the Court, lack of consent rather than force is the essential element of rape and sexual abuse.

The Court recognised that, in practice, it may sometimes be difficult to prove lack of consent in the absence of 'direct' proofs, such as traces of violence or direct witnesses. However, investigations must be centred on the issue of non-consent and the authorities must explore all the facts and decide on the basis of an assessment of all the surrounding circumstances. In the applicant's case, the Court found that the Bulgarian authorities' approach was restrictive, practically elevating 'resistance' to the status of defining element of the offence. The authorities also failed to take into consideration the age of the applicant. The Court therefore concluded that Articles 3 and 8 ECHR were breached.⁴⁹

⁴⁸ Opuz v. Turley (2009). European Court of Human Rights, Case 33401/02, Court (Third Section) [online]. Available at: <https://bit.ly/3bFxuPn>

⁴⁹ M.C. v Bulgaria (2003). European Court of Human Rights. Case 39272/98 [online]. Available at: <https://bit.ly/3ELSRLD>

b) Legal context and challenges

The first target of SDG 5 calls for the adoption and strengthening of legal frameworks to promote, enforce and monitor equality and non-discrimination on the basis of sex. A robust legal framework for gender equality is indeed a crucial component for the protection and promotion of women's human rights.

Upon ratifying the CEDAW, States committed to embody the principle of equality between men and women in their national constitutions and to 'ensure, through law and other appropriate means, the practical realisation of this principle' (Art. 2).

In 2010, the Human Rights Council created a working group to focus on discrimination against women in law and in practice.⁵⁰ One of the group's tasks is to develop a discourse with States and other stakeholders on laws that cause discriminatory results.

The Working Group's focus illustrates some of the legal hurdles and challenges faced in the implementation of SDG 5, and divides these hurdles into four main categories:

- i. Explicit discrimination in law
- ii. Discriminatory implementation of the law
- iii. The discriminatory impact of the law
- iv. The discriminatory absence of law

Explicit discrimination in law refers to laws that are explicitly discriminatory in their wording, for instance, providing for

different ages of marriage of women and men, or requiring a husband's consent for access to reproductive health services.

The discriminatory implementation of law refers to inadequate enforcement or implementation of laws, resulting in continued discrimination against women. One common example is the lack of enforcement of equal pay laws.

Robust legal frameworks for gender equality are crucial to protecting and promoting women's rights.

Similarly, the discriminatory impact of law refers to laws which appear gender-neutral but have a disproportionately adverse effect on women and girls because they take insufficient account of the realities of women's lives and existing sexual discrimination. As an example, despite the fact women and girls predominantly are victims of domestic violence or sex trafficking, certain immigration regulations fail to provide them with specific protection.

Finally, the discriminatory absence of law covers instances where the absence of a specific law allows discrimination to continue without specific redress. This category includes, for example, the lack of a law against sexual harassment or a law to protect the rights of domestic workers, most of whom are women.⁵¹

⁵⁰ Human Rights Council (2010). *Resolution adopted by the Human Rights Council 15/23 Elimination of discrimination against women*. UN General Assembly [online]. Available at: https://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.RES.15.23_En.pdf

⁵¹ Equality Now (2011). *Discrimination against Women in Law*. London: Equality Now [online]. Available at: <https://bit.ly/3wcCYuw>

In all contexts, even in countries with extensive and robust gender equality laws and policies, there are ongoing challenges to implement progressive laws in practice and to achieve women's full equality.

The continuous existence of long-established cultural and traditional practices that discriminate against women and girls is one of the key legal hurdles to the implementation of SDG 5.⁵² These discriminatory practices have restricted progress towards gender equality, and such practices have not changed as quickly as legal and institutional frameworks.

In its 2018 annual report,⁵³ the Working Group on discrimination against women in law and practice acknowledged progress in women's rights over the past decade – particularly in closing the gender gap in education – but also highlighted areas of deadlocks:

- Family and culture: equality in the private domain remains one of the biggest hurdles to achieve gender equality, as witnessed by the high number of reservations to Article 16 'equality in the family' of the CEDAW, justified by States through deference to religious norms.
- Sexual and reproductive rights: one quarter of the world's population lives in States whose laws severely restrict termination of pregnancy, which pushes women towards clandestine and unsafe solutions.
- Economic and social participation: women continue to be paid less than men for work of equal value and are severely underrepresented in leadership roles across

sectors.

- Political participation: despite progress, women are still underrepresented in all branches and levels of government.

The current international context with respect to gender equality presents a mixed picture. On one hand, conservative lobbies, particularly active in Latin America and Eastern Europe, consider efforts towards gender equality as a threat to 'traditional values' and vehemently fight progress on sex education in schools, women's sexual and reproductive rights and gender-based violence. Moreover, women and girls are disproportionately affected by the effects of the COVID-19 pandemic and the measures put in place in response to it. On the other hand, new forms of popular political expression, such as the 'Ni Una Menos' and 'MeToo' movements, have put the issue of violence against women high on the global agenda.

The continuous existence of long-established cultural and traditional practices that discriminate against women and girls is one of the key legal hurdles to the implementation of SDG 5.

52 UN ECA African Development Forum (2008). *Action on gender equality women's empowerment and ending violence against women in Africa*. [online]. Available at: <https://bit.ly/3bFQZY6>

53 Human Rights Council (2017). *Report of the working group on the issue of discrimination against women in law and practice*. UN General Assembly [online]. Available at: https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Documents/A_HRC_35_29_Add.2_AEV.docx

c) So, what can lawyers do?

This section highlights several avenues through which the legal community can build its understanding of the SDGs in general, and of SDG 5 in particular. It focuses on how lawyers can use this knowledge to improve their practice and share their learning with colleagues and clients (learn and educate). This section also examines ways that law firms and lawyers can integrate SDG 5 within their organisations, both in their internal operations and in their daily work (integrate).

Finally, it recognises the broader opportunities for law firms to engage with SDG 5 through pro bono work, positive advocacy and community involvement (act). The ideas put forward here are intended to kickstart a conversation about the role of the legal community in the realisation of the SDGs. A4ID's SDG Legal Initiative will continue to push this global conversation forward and create pathways of opportunity for lawyers, the development community, and academics.

Learn and educate

Lawyers can enhance their understanding of gender equality, along with the policies and programmatic efforts to advance it - at national, regional and international levels. Substantial research and analysis are available in the field of Law & Gender that highlight the role of law and justice in achieving gender equality in general and SDG 5 in particular.

Important sources include:

- International development agencies, especially UN Women. The report 'Turning promises into action: Gender equality in the 2030 Agenda'⁵⁴ and the paper 'Human Rights and Gender Equality'⁵⁵ are useful starting points for lawyers interested in SDG 5.
- The reports of the UN Special Rapporteur on violence

against women.⁵⁶

- The thematic review of SDG 5 by the High-Level Political Forum.⁵⁷
- Several law journals, which focus on the intersection of law and gender, such as the Harvard Journal of Law and Gender, Yale Journal of Law and Feminism, or Columbia Journal of Gender and Law.
- The Global Gender Equality Constitutional Database, a repository of gender equality related provisions extracted from 194 constitutions from around the world covering topics such as affirmative action, employment rights and protection, participation in public and political life, and protection from violence.

54 UN Women (2018). *Turning promises into action: gender equality in the 2030 Agenda for Sustainable Development*. UN Women [online]. Available at: <https://bit.ly/3wfa8cN>

55 Fredman, S. and Goldblatt, B. (2015). Discussion paper: gender equality and human rights. UN Women [online]. Available at: <https://bit.ly/3jZrzZZ>

56 Human Rights Council (2019). Twenty-five years of the mandate of the Special Rapporteur on violence against women, its causes and consequences. UN Human Rights [online]. Available at: <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx>

57 High Level Political Forum on Sustainable Development (2017). HLPF Thematic review of SDG 5. [online]. Available at: <https://bit.ly/3GL3b8r>

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- Several civil society groups and NGOs offer online repertoires of relevant legal documents, such as the [Gender Justice Observatory](#) by Women's Link Worldwide or the [Virtual Library on Equality](#) by Equal Rights Trust.

Law firms can get involved in activities to raise awareness on gender equality and the ways to promote it, such as publishing research papers and organising events (including legal clinics, seminars, panel presentations and international roundtables) on relevant topics.

Raising awareness in the legal community and in the general public about persisting discriminations against women and girls can be instrumental in eliminating these.

At the firm level, managing and senior partners should review and familiarise themselves with the SDG 5 targets. Firms should identify the direct opportunities to positively contribute to achieving SDG 5, as well as the potentially negative or unintended impacts that their organisation could have on the targets and ways to mitigate these risks.

Integrate

Despite women and men's entrance into law school in roughly equal numbers over the past few decades, women remain greatly under-represented in positions of leadership and power across sectors of the profession.⁵⁸ In addition, there remains a significant earnings disparity between male and female lawyers, particularly in higher positions.⁵⁹ This gives rise to the situation where the very profession responsible for addressing such exclusion in other contexts faces challenges in addressing its own internal equality issues.

It may be argued that the need for gender equality and women's empowerment are beginning to be addressed by law firms. The implementation of official 'family friendly' policies and allowances for part-time schedules can benefit women associates to meet family needs without compromising their career goals. However, many female

lawyers are reluctant to leverage this policy due to the worry of professional repercussions and the risk that the utilisation of the policies can hinder progress for their career and promotion.⁶⁰

As the profession that fights for justice and fairness, we must ensure women have equal pay and representation within the legal profession.

It has become increasingly important for law firms to encourage their lawyers to support gender equality programmes. They often implement women's forums within their firms to address such concerns. These programmes and forums are evidence that the promotion of gender equality is becoming an important initiative for business, and not just

58 Brenner, H. (2014). Expanding the pathways to gender equality in the legal profession. Oxford: Legal Ethics.

59 Neil, M. (2013). *Top in-house lawyers get a lot less when female, survey says*. ABA Journal [online]. Available at: <https://bit.ly/3q0kl6A>

60 Oliver, R. (2015). *Issues affecting women in the legal profession*. Ms JD Blog [online]. Available at: <https://ms-jd.org/blog/article/issues-affecting-women-in-the-legal-profession>

for human resources. A gender-balanced workforce can have commercial advantages,⁶¹ as it is becoming more and more common for clients to inquire about the company's policies or request data on diversity.

To prevent gender-based discrimination or harassment, law firms should have a written, publicly available non-discrimination policy based on the principle of zero tolerance. Information about gender discrimination should be included in the training of all staff. Victims and witnesses should have access to a confidential reporting mechanism. Law firms should regularly assess the efficacy of policies and grievance mechanisms and implement reforms based on the results.

They should adopt a voluntarist policy to increase representation of women in management. In order to identify and correct inequalities in career development, it is necessary

to collect data, disaggregated for men and women, on their access to and use of opportunities (for instance, internal promotion rates, performance reviews, access to support staff, etc.). A gender pay gap audit, reviewing all forms of compensation, including bonuses, insurance benefits, retirement contributions, can help to ensure that jobs of equal value are paid equally.

Law firms can join networks which bring together stakeholders from a variety of sectors and industries to accelerate progress on the SDGs, including on gender equality. The UN Global Compact is the world's largest corporate sustainability initiative whose strategy is to drive business awareness and action in support of achieving the SDGs by 2030. The network provides a framework to guide all businesses to assess, define, implement, measure,



61 Lynn, H. (2015). *Promoting gender equality is business critical*. LexisNexis, Future of Law [online]. Available at: <https://bit.ly/3waPGtl>

and communicate their sustainability strategy. More than 9,500 corporations are members of the UN Global Compact, including some of the world's leading law firms. In respect to SDG 5, the UN Global Compact invites its members to endorse the seven Women's Empowerment Principles, i.e.:

- i. Establish high-level corporate leadership for gender equality.
- ii. Treat all women and men fairly at work – respect and support human rights and non-discrimination.
- iii. Ensure the health, safety and well-being of all women

and men workers.

- iv. Promote education, training and professional development for women.
- v. Implement enterprise development, supply chain and marketing practices that empower women.
- vi. Promote equality through community initiatives and advocacy.
- vii. Measure and publicly report on progress to achieve gender equality.⁵⁹



62 UN Global Compact (n.d.). *Endorse the women's empowerment principles*. UN Global Compact [online]. Available at: <https://bit.ly/2ZW6fxJ>

Act

Many law firms are working to make their pro bono work more strategic, collaborative and sustainable. By aligning their work with the SDGs, lawyers can be confident that they are taking practical steps towards a comprehensive and inclusive roadmap for sustainable development. This can help firms to establish and develop collaborative, cross-sector partnerships with other organisations that are working towards the same goals. When considering international pro bono, law firms should establish relationships with NGOs and local partners that can provide insight on the context and the national legal environment. Such partnerships will not only help to broaden the impact of the firm's pro bono work, but also ensure that it responds to the local context and needs.

Developing a pro bono strategy with clearly identified goals

enables firms to assess the effectiveness of their pro bono work over time and thereby increase its impact. The SDG framework offers law firms the opportunity to effectively measure and demonstrate their positive impact towards globally recognised goals. There is wide recognition that pro bono work which is focused on progressing long-term goals and implemented in partnership with relevant organisations will lead to more sustainable results than ad hoc pro bono assistance.

The SDGs thus present a compelling opportunity for law firms, corporate legal departments and other lawyers to expand their pro bono legal activities domestically and abroad.

Help draft legislation

Legal frameworks are essential to women's rights. Discriminatory laws - especially in the fields of sexual and domestic violence, inheritance, land tenures, access to financial services, sexual and contraceptive health and parental leave - are still in place in many countries. International legal pro bono can accompany and reinforce national legal reform aimed at eliminating sex-based

inequalities in legislations and policies.

In fact, every programme supporting the drafting of a new legislation or the reform of an existing one should include a gender impact assessment in order to identify the potential adverse impact on women.

Advising civil society organisations

Law firms and individual lawyers can provide pro bono legal services to civil society organisations dedicated to gender equality and women's rights. Lawyers could, for instance,

advise NGOs on international legal instruments on gender equality, such as CEDAW, to enable them to participate in advocacy campaigns.

Support capacity building activities

The CEDAW Committee's General Recommendation No.19 states that 'gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention'. Lawyers and

law firms can contribute to train legal actors on how laws may have gendered consequences and on how gender equality can be enforced through judicial mechanisms.

Policy Advocacy

Law firms and lawyers can provide expertise and advocate for sound policy changes and enforceable legislation reforms for

the promotion of gender equality and the empowerment of all women and girls at all levels.

Help seek remedies when there is gender-based discrimination

Even when the legal framework promotes gender equality, women and girls continue to be subjected to discrimination, violence and harmful practices. Lawyers and law firms, through their pro bono work, can help women who cannot afford the legal costs to pursue their rights where they have been violated, for instance representing women victims of domestic abuse. Strategic litigation can also play a transformative role and lead to legislative reforms or interpretation benefitting women's rights.

Working in partnership with development professionals and local actors to deliver international pro bono legal support is crucial to ensure that the legal assistance is adapted to the local context, responsive to actual community needs and as effective as possible. Working collaboratively, A4ID has produced resources to guide law firms seeking to align their pro bono practice to the SDGs.⁶³

63 ROLE UK (2018). *Pro bono and the Sustainable Development Goals*. London: ROLE UK, UK Aid [online]. Available at: <https://bit.ly/3k1uyBg>



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